

- C. Claim 6. The current invention teaches, and was specifically designed, with the top and bottom edges narrowing in the direction of the proximal to the distal end; i.e., from the stern of the boat outwards such that the blade itself narrows in the direction opposite that of travel in the boat. The invention as disclosed to Cabela's had no such feature.
 - D. Claim 7. The connecting device shown in Exhibit 1 as disclosed to Cabela's comprised a hollow tube, with no downward angle imbued in the device other than the angle, if any, inherent in the design of the stern of the boat to which it was attached. The present invention teaches a design that intentionally includes a downward angle to the device, imparted by the design of the connection device, that is greater than any downward angle, if any, imparted upon the device by the angle of the stern of the boat to which it is attached. See Exhibit 1, Exhibit 2, and as described in the Specification, Page 4, Lines 10-14.
 - E. Claims 8, 9, 10 and 11. As taught in the present Application, the present invention's connection device includes both a hinging mechanism and a restraining device that limits the downward travel of the device. As revealed in Exhibit 1, the invention as disclosed to Cabela's has no such hinging or restraining means; the device was fixed and immovable.
 - F. Claim 12. The edge narrowing feature has been discussed above at paragraph 2(C).
3. Anticipation by Miller, U.S. Pat. No. 1,444,847. Examiner contends that Applicant's invention as claimed in Claims 1-4, 6, 8, and 11 are anticipated by Miller.
- A. Claims 1-4, 6, 8 and 11. Miller teaches a "Propulsion of Boats and other Vessels." First, it is not the object of, nor does Applicant teach, any propulsive effect from the present invention. Miller teaches a paddle or blade that is pivoted from side-to-side to act as a rudder and/or in such a manner as to impart forward momentum to a boat; the motion imparted upon the blade in Miller is horizontal with respect to the blade surfaces. The present invention teaches a vertical freedom of motion with respect to the blade surfaces. Such motion is not intended to steer or propel the boat. The motion is intended to allow the blade of the present invention to move over submerged obstacles. The design and motion taught by Miller is inherently different from the design and motion disclosed in the present Application. Examiner therefore erroneously relies upon Miller as anticipating the present invention.

4. Anticipation by Coulter, U.S. Pat. No. 227,491. Examiner contends that Applicant's invention as claimed in Claims 1-7 are anticipated by Coulter. Examiner states that "Coulter discloses a pivotally attached blade shaped as claimed."
 - A. Similar to the Miller patent above, the Coulter patent teaches a device for providing boat propulsion (a "Sculling-Propeller for Boats"). The connection device taught in Coulter creates two motions; a horizontal motion about a vertical shaft, and a rotational motion around a sleeve-and-cogwheel device. The combination of the two motions creates an 'oscillation.' In the present invention, movement occurs vertically about a horizontal pin, allowing free vertical motion that is restrained in a downward direction by an adjustable restraint. Coulter fails to teach a device allowing such motion. In addition, Coulter fails to teach that the blade portion may be disconnected as taught in the present invention (Claim 3). Further, Coulter fails to teach a bottom edge angled downward (Claim 5 of the present invention), narrowing bottom and top edges (Claim 6 of the present invention), and attachment at a downward angle (Claim 7 of the present invention). Examiner therefore erroneously relies upon Coulter as anticipating the present invention.
5. Anticipation by Keivanjah, U.S. Pat. No. 4,642,056. Examiner contends that Applicant's invention as claimed in Claims 1-5, 7, and 9-12 are anticipated by Keivanjah. Examiner states that "Keivanjah discloses a fin and a line 90."
 - A. The Keivanjah patent, similar to the Miller and Coulter patents, relates to a water craft that "utilizes a fin propulsion system of improved efficiency." While Keivanjah teaches a generally blade-shaped attachment for a water craft, the Keivanjah patent fails to teach a connecting means for attaching the blade structure to an existing water craft or boat (Claim 2 of the present invention), a means for disconnecting the blade portion (Claim 3 of the present invention), vertical surfaces that serve to stabilize the boat (Claim 4 of the present invention), a downward angle (Claim 5 of the present invention) to the bottom edge for movement over submerged obstacles, and a downward angle imparted to the entire device structure (Claim 7 of the present invention). Examiner therefore erroneously relies upon the Keivanjah patent as anticipating the present invention, Claims 1-5 and 7.
 - B. For the claims 9-12, wherein the present invention claims a downward range of motion of the device blade limited by a restraining means, Examiner incorrectly relies upon Keivanjah patent as anticipating the restraining means. However, Keivanjah teaches a cable 90 to a pivotally mounted cantilever arm 94. The cable serves to move (raise) the cantilever arm, not the entire blade structure. In addition, the cantilever being raised places tension upon the flexible material that the blade portion of the Keivanjah device is constructed of while the present invention does not teach a flexible blade portion. The restraining means 11

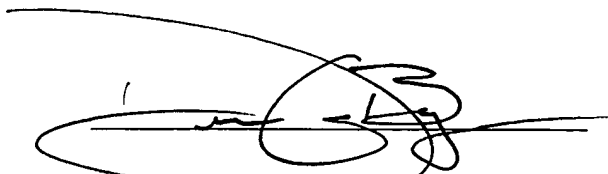
disclosed in the present invention serves only to restrict the free vertical motion of the blade portion to a maximum downward angle; the restraining means is not an adjustable or controllable cable as disclosed in the Keivanjah patent, and is attached directly to the blade rather than to a tensioning cantilever arm as in the Keivanjah patent. Examiner therefore erroneously relies upon the Keivanjah patent as anticipating the present invention of claims 9-12.

6. Anticipation by Stolzer, U.S. Pat. No. 4,960,396. Examiner contends that Applicant's invention as claimed in Claims 1-5 and 7-12 are anticipated by Stolzer. Examiner states that "Stolzer teaches a blade, and a spring for controlling position."

- A. Examiner incorrectly relies upon Stolzer as anticipating Claims 1-5 and 7-12 of the present invention. However, the device as taught by Stolzer does not anticipate the Claims of the present invention. As above, the Stolzer patent teaches a propulsion system, not a stabilizing system.

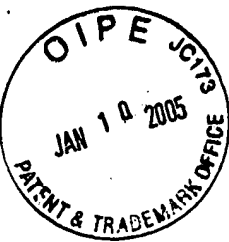
1. The paddle portion of the Stolzer patent is "normally oriented in a generally upright position." Stolzer, U.S. Pat. No. 4,960,396, Column 3 Line 10. Stolzer does not teach a connecting means in anticipation of that taught in the present invention, Claims 1-5. The Stolzer device also does not teach a means to quickly disconnect the paddle (Claim 3 of the present invention), nor does Stolzer teach a connecting device that mounts the blade at an angle downward and outward from the craft at an angle as taught by the present invention in Claim 5. Stolzer's also does not teach the specific mounting mechanism and movement as taught in the present invention at Claims 7-10. In Stolzer, the device's blade portion moves in a forward-backward motion to ride over obstacles and the movement out of the vertical orientation is restricted through the use of a tensioning spring 71. As the blade in Stolzer's device moves out of the vertical alignment, a cam mechanism attached to the spring allows the blade to be returned to the vertical orientation either by the force of water resistance (Stolzer, Column 3, Lines 6-9) or by manipulation of the pedals (Stolzer, Column 3, Lines 36-39). In the present invention, there is no resistance created by the use of the restraining device; as the blade portion strikes a submerged obstacle, the blade and shaft portion move freely about the connection device in the vertical direction. After the blade has moved over the obstacle, the blade returns to the desired downward angle through the force of gravity without mechanical assist. The restraining device of the present invention serves to limit the maximum downward angle to which the blade portion will return, not to force the return to that position as in the Stolzer device. Therefore, although both Stolzer and the present invention cite the use of a spring, the purpose and mechanical design of the two are not the same. Examiner has therefore erroneously relied upon Stolzer as anticipating the present invention's Claims 1-5 and 7-12.

7. Brooks, U.S. Pat. No. 4,211,180. Applicant notes that Examiner has cited Brooks, Jr. James C., U.S. Pat. No. 4,211,180 in his list of references cited, although Examiner has not relied upon Brooks for objections and/or rejections in his Office Action. Therefore, to the extent that a response is necessary, Applicant states that his current invention is not anticipated by Brooks, either under 35 U.S.C. § 102 or 35 U.S.C. § 103; the present invention is patently distinguishable from Brooks.

A handwritten signature in black ink, appearing to read 'Duncan G. Byers', with a large, stylized flourish extending from the end of the signature.

Duncan G. Byers
Reg. No. 50,707
Of Counsel

Don F. Widlacki
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**APPLICANT'S RESPONSE TO EXAMINERS' FIRST
OFFICE ACTION RE: PAT. APP. NO. 10/761,561**

EXHIBIT 3

AFFIDAVIT OF APPLICANT DON F. WIDLACKI, JR.

Commonwealth of Virginia,
City of Norfolk, to-wit:

Don F. Widlacki, Jr. upon oath and in accordance with 37 C.F.R. 1.132, hereby states as follows:

1. I am an adult resident of the United States of America, Newport News, Virginia, I am under no legal disability, I have personal knowledge of the following facts, and I am competent to testify as to all matters contained herein.

2. I am the sole inventor of the invention disclosed in my Patent Application No. 10/761,561.

3. I have submitted all materials known to me which may affect my application, both positively and adversely, and in particular my submission to Cabela's for the sale of an earlier invention. All materials pertinent to that offer were submitted, in full, with my Application.

4. The invention as offered to Cabela's is shown fully in the photograph attached herein and submitted with my response to Examiner's First Office Action as Exhibit 1. That photograph was taken on or before the date of submission to Cabela's.

5. The device as described in my Patent Application No. 10/761,561 is shown in the sheet of photographs as attached herein and submitted with my response to the Examiner's First Office Action as Exhibit 2. The present device so disclosed has never been submitted in an offer for sale or other manner disclosed to any third party for the year prior to the filing date of the Provisional Application of which my present Application claims benefit.

6. The present invention as disclosed in my Application No. 10/761,561 and as shown in Exhibit 2 is patently distinguishable in the manner described in my RESPONSE TO EXAMINER'S FIRST OFFICE ACTION, Paragraphs 2 and 2(A)-(F) from the invention as disclosed to Cabela's and as shown in Exhibit 1.

Further the affiant saith not.

Don F. Widlacki, Jr.
Don F. Widlacki, Jr.

Executed this 6th day of January, 2005 in the city of Norfolk of the Commonwealth of Virginia, by Don F. Widlacki, Jr.

Signed and sworn to before me on the 6th day of January, 2005.
Notary Public Rhonda A. Spurrier
My commission expires 4/30/08.

